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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

GILBERT R. AGUILAR,

Defendant and Appellant.

In re GILBERT R. AGUILAR,

on Habeas Corpus.

B164237 and B174532

(Los Angeles County
Super. Ct. No. KA053920)
(Bruce F. Marrs, Judge)

ORDER MODIFYING OPINION
AND DENYING REHEARING
[NO CHANGE IN JUDGMENT]

THE COURT:*

It is ordered that the opinion filed September 15, 2004, be modified as follows:

1. On pages 10-11, the third paragraph of the **DISCUSSION** is modified to read as follows:

“The motion for new trial, including the issue of a probable different outcome on retrial, must, of course, be decided on the evidence actually before the

court at that time, *not on the basis of evidence that might be developed.*” (*People v. Beeler, supra*, 9 Cal.4th at p. 1004, italics added.) Here, as in *Beeler*, all the court had before it was evidence “so tenuous that it clearly did not make a different outcome probable, or even remotely likely.” (9 Cal.4th at p. 1005.)

There is no change in the judgment.

Appellant’s petition for rehearing is denied.